

**Notice of Allowability**

Application No.

10/756,625

Examiner

Matthew F. DeSanto

Applicant(s)

MCGUCKIN ET AL.

Art Unit

3763

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/18/07.
2. ☒ The allowed claim(s) is/are 28-30, 32-36, 39 and 41-43.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application   |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>9/18/07</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                        |
|  | 9. <input type="checkbox"/> Other _____   |

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Neil Gershon on September 18, 2007.

The application has been amended as follows:

#### **In the Specification:**

Page 1, paragraph 1, please substitute the following:

This application is a divisional of U.S. patent application serial no. 10/081,695 filed February 22, 2002, which claims priority from provisional patent application serial no. 60/348,301, filed November 7, 2001 and from provisional patent application serial no. 60/272,119, filed February 28, 2001.

#### **In the Claims:**

Claim 28. A method for treating a lesion comprising:  
inserting an apparatus adjacent the lesion;  
advancing an actuator in a first direction to deploy a plurality of tines radially through side openings in the apparatus such that a distal tip of the tines does not extend distally of a distal tip of the apparatus; and  
injecting a treatment fluid through a lumen in the tines and through a plurality of side openings in the tines to ablate the lesion;  
wherein the apparatus includes a marking ring mounted thereon, and the method further includes the step of sliding the marking ring along the apparatus to align with a desired depth marking prior to the step of inserting the apparatus and the step of moving the apparatus until resistance is felt by the marking ring.

Cancel Claim 31.

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Claim 35: A method for treating a lesion comprising:

inserting an apparatus adjacent the lesion, the apparatus having a plurality of fluid delivery members positioned therein and internally disposed tactile indicator;

moving an actuator in a first direction to deploy the plurality of fluid delivery members radially through side openings in the apparatus such that a distal tip of the fluid delivery members does not extend distally of a distal tip of the apparatus, the fluid delivery members having a lumen and at least one opening communicating with the lumen and the actuator;

injecting a treatment fluid through a lumen in the fluid delivery members and through the opening in the fluid delivery members to ablate the lesion; ~~and~~

moving the actuator to a second position to deploy the fluid delivery members to a second position so tips of the fluid delivery members are positioned further radially from the apparatus in the second position than in the first position;

wherein the step of moving the actuator to a second position includes the step of providing a tactile feel to the user that the fluid delivery members are engaged in the second position as a result of engagement of the internally disposed tactile indicator;  
and

providing an indicator on the apparatus to visually indicate whether the fluid delivery members are in the first or second position.

Cancel claim 37.

Cancel claim 38.

Claim 39: A method for treating a lesion comprising:

placing a skin patch on the skin;

inserting an apparatus through the skin patch adjacent the lesion, the apparatus having a plurality of fluid delivery members positioned therein;

aligning the apparatus with indicia on the skin patch to provide an indication of the radial orientation of the fluid delivery members;

moving an actuator to a first position to deploy the plurality of fluid delivery members radially with respect to the apparatus, the fluid delivery members having a lumen and at least one opening communicating with the lumen; ~~and~~

injecting a treatment fluid through a lumen in the fluid delivery members and through an opening in the fluid delivery members to ablate the lesion;

rotating the apparatus to change the radial orientation of the fluid delivery members, the step of rotating includes aligning the indicia on the apparatus with other indicia on the skin patch to provide an indication of the radial orientation of the fluid delivery members; and

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wherein the apparatus includes a marking ring mounted thereon, and the method further includes the steps of sliding the marking ring along the apparatus to align with a desired depth marking and moving the apparatus until resistance is felt by the marking ring, the step of sliding the marking ring along the apparatus performed prior to the step of inserting the apparatus.

Cancel claim 40.

### **Reasons for Allowance**

2. The following is an examiner's statement of reasons for allowance:

The subject matter of the independent claims could either not be found or was not suggested in the prior art of record. The subject matter not found for claims 28 and 39 is a method for treating a lesion with an apparatus having an actuator connected to a plurality of tines that infuse fluid to treat the lesion. The apparatus further includes a marking ring that controls the depth of the insertion device.

The subject matter not found for claim 35 is a method for treating a lesion with an apparatus having an actuator connected to a plurality of fluid delivery members that infuse fluid to treat the lesion. The apparatus further includes a tactile and a visually indicator that show and feel when the actuator and fluid delivery members are in a first or second position.

The independent claims also include other patentable subject matter in combination with the other elements or steps of the claim not mention in the above paragraphs.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew DeSanto  
Art Unit 3763  
September 27, 2007

MATTHEW F. DESANTO  
PRIMARY EXAMINER

